

California Regional Water Quality Control Board  
Santa Ana Region

April 15, 2005

**ITEM:** 23

**SUBJECT:** Administrative Civil Liability Complaint No. R8-2005-0028, Downtown Auto Wrecking, San Bernardino, San Bernardino County

**BACKGROUND**

On March 1, 2005, the Executive Officer issued Administrative Civil Liability Complaint (ACL) No. R8-2005-0028 (copy attached) to Downtown Auto Wrecking (Downtown Auto) for alleged violations of the State's General Permit for Storm Water Runoff Associated with Industrial Activity (General Permit). In the ACL, the Executive Officer proposed an assessment of \$5,000 for the alleged violations.

**INTRODUCTION**

The matter before the California Regional Water Quality Control Board, Santa Ana Region (Board) is whether to affirm, reject, or modify the proposed administrative civil liability assessment against Downtown Auto.

ACL No. R8-2005-0028 was issued by the Executive Officer to Downtown Auto for failure to submit the annual report for the year 2003-2004.

**DISCUSSION**

The General Permit regulates the discharge of storm water from industrial sites as required under Section 402(p) of the Federal Clean Water Act. Coverage under the permit is obtained by filing a Notice of Intent (NOI), site map, and a fee (annual fee of \$830), with the State Water Resources Control Board. Downtown Auto filed a NOI and obtained coverage under the General Permit, WDID No. 8 36S004480. Downtown Auto is located at 519 E. Mill Street, San Bernardino.

The General Permit requires all facility operators to submit an annual report by July 1 of each year. Because the annual report was not submitted on time, a Notice of Noncompliance was issued on July 26, 2004. A second Notice of Noncompliance was issued on September 2, 2004. Both letters were received by the addressee. The Notices of Noncompliance requested submittal of the completed annual report to the Board office by September 17, 2004, with a statement explaining why the annual report was not submitted by the July 1 deadline. The second notice also warned the discharger of the mandatory penalty for failure to submit the annual report.

On December 2, 2004, Board staff called Mr. Steve Reich and reminded him to submit the annual report and informed him about the mandatory penalty for non-submittal of the annual report.

On December 20, 2005, Board staff again reminded Mr. Reich to submit the annual report. The annual report was finally submitted on December 22, 2005.

The facility violated the California Water Code and the Clean Water Act. The facility was repeatedly given notice to comply with the General Permit.

Downtown Auto failed to submit the required annual report to the Regional Board office within 60 days from the date of the first Notice of Non-Compliance. Section 13399.33(c) of the Water Code requires that a mandatory penalty shall be imposed by the Board in an amount that is not less than one thousand dollars (\$1,000) for failure to submit the annual report.

Additionally, Section 13385(a)(2) of the California Water Code provides that any person who violates waste discharge requirements issued pursuant to the Federal Clean Water Act shall be civilly liable. Section 13385(c) provides that civil liability may be administratively imposed by a regional board in an amount not to exceed ten thousand dollars (\$10,000) for each day the violation occurs.

The facility is alleged to have violated the General Permit for 173 days (from July 1, 2004 to December 22, 2005). The maximum liability for this violation is \$1,730,000.

Section 13385(e) specifies factors the Board shall consider in establishing the amount of civil liability. These factors are discussed below.

#### **Nature, Circumstances, Extent and Gravity of Violation**

By submitting the NOI, the discharger certified that it would comply with the provisions of the permit. The General Permit requires that an annual report be submitted to the Board office by July 1 of each year. Despite several reminders, Downtown Auto failed to submit the report in a timely manner. The discharger was aware of the requirement to submit the annual report by July 1.

#### **Ability to Pay the Proposed Assessment**

The discharger has not indicated that he is unable to pay the proposed penalty.

### **Prior History of Violations**

Board staff issued Notices of Non-Compliance for non-submittal of annual reports for 1992-93, 1995-96, 1996-97, 1999-00, 2000-01, and 2001-02. In 1998, an ACL was issued for non-submittal of the 1996-97 annual report. However, it was withdrawn based on the discharger's claim that the annual report was mailed to the wrong address. The facility has been chronically late in submitting its annual reports and has a long history of non-compliance, including the submission of incomplete and/or inaccurate reports. On October 3, 2001, the facility was notified of non-compliance issues, based on an inspection conducted by US EPA contractors. On February 19, 2003, the Board staff issued an ACL for non-submittal of 2001-2002 annual report. On April 4, 2003, the Board affirmed the assessment of \$2,500 as specified in ACL Complaint No. R8-2003-0008. The facility has not paid the penalty imposed by the Board in April 2003. Board staff has recorded a judgment against Downtown Auto in the Superior Court and is the process of taking additional steps to collect this amount.

### **Degree of Culpability**

The discharger violated the terms of the General Permit by failing to submit its annual report and failing to conduct and properly document its inspection and monitoring program. The facility did not respond in a timely manner to staff requests to submit the annual report. Downtown Auto Wrecking has not been responsive to Board staff's efforts to bring the site into compliance.

### **Economic Benefit or Savings, if any, Resulting from the Violations**

Cost savings from the late submittal of the annual report is estimated to be less than \$50.

### **STATEWIDE ENFORCEMENT POLICY**

On February 19, 2002, the State Water Resources Control Board adopted a State Water Quality Enforcement Policy to ensure that enforcement actions throughout the State are consistent, predictable, and fair. The above-described administrative civil liability complaint is in accordance with the Statewide Enforcement Policy.

### **RECOMMENDATION**

After consideration of the above factors, staff recommends that the Board affirm the assessment of \$5,000 (this includes \$1,000 for the mandatory minimum penalty), specified in the Administrative Civil Liability Complaint issued by the Executive Officer on March 1, 2005.

**STATE OF CALIFORNIA  
REGIONAL WATER QUALITY CONTROL BOARD  
SANTA ANA REGION**

<b>In the matter of:</b>	)	<b>Order No. R8-2005-0062</b>
	)	<b>for</b>
<b>Downtown Auto Wrecking</b>	)	<b>Administrative Civil Liability</b>
<b>519 E. Mill Street</b>	)	
<b>San Bernardino, CA 92408</b>	)	
	)	
<b><u>Atten: Mr. Steve Reich</u></b>	)	

The California Regional Water Quality Control Board, Santa Ana Region (hereinafter Board), held a hearing on April 15, 2005 to receive testimony and take evidence on the allegations contained in Complaint No. R8-2005-0028, dated March 1, 2005, and on the recommendation for the imposition penalties pursuant to Water Code Sections 13385 and 13399.33(c) in the amount of \$5,000. The Board finds as follows:

1. On April 17, 1997, the State Water Resources Control Board (SWRCB) adopted Waste Discharge Requirements, Order No. 97-03-DWQ, (NPDES No. CAS000001), General Permit for Storm Water Discharges Associated with Industrial Activities (Permit). Downtown Auto Wrecking is authorized to discharge storm water under the Permit, WDID 8 36S004480. The Permit requires Downtown Auto Wrecking to submit an annual report by July 1 of each year. Downtown Auto Wrecking did not submit the annual report by July 1, 2004. Subsequently, Board staff sent two certified Notices of Noncompliance (NNCs) to Downtown Auto Wrecking, the first one on July 26, 2004 and the second one on September 2, 2004. These NNCs reminded Downtown Auto Wrecking that the annual report had not been received and that there is a mandatory penalty for non-submittal of the annual report. The second NNC required Downtown Auto Wrecking to submit the annual report by September 17, 2004.
2. Downtown Auto Wrecking failed to submit the annual report to the Regional Board office within 60 days from the date of the original Notice of Noncompliance.
3. Water Code Section 13399.33(c) requires the Board to assess a mandatory minimum penalty of one thousand dollars (\$1,000) for non-submittal of the annual report under these circumstances.
4. Water Code Section 13385(a)(2) provides that any person who violates waste discharge requirements issued pursuant to the Federal Clean Water Act shall be civilly liable. Section 13385(c) provides that civil liability may be administratively

imposed by a regional board in an amount not exceed ten thousand dollars (\$10,000) for each day the violation occurs.

5. On March 2, 2005, the Executive Officer issued ACL Complaint No. R8-2005-0028 to Downtown Auto Wrecking proposing that the Board impose a penalty of \$5,000 on Downtown Auto Wrecking for the violations cited above, including \$1,000 for the mandatory minimum penalty.
6. Issuance of this Order is exempt from the provisions of the California Environmental Quality Act (Public Resources Code Section 2100 et seq.) in accordance with Section 15321, Chapter 3, Title 14, California Code of Regulations.

**IT IS HEREBY ORDERED** that, pursuant to California Water Code Sections 13385(c) and 13399.33(c), a penalty shall be imposed on Downtown Auto Wrecking, in the amount of \$5,000, as proposed in Complaint No. R8-2003-0028 for the violations cited, payable as set forth below.

1. Downtown Auto Wrecking shall pay \$5,000 to the State Water Resources Control Board by May 16, 2005.

The Executive Officer is authorized to refer this matter to the Attorney General for enforcement.

Pursuant to Water Code Section 13320, you may petition the State Water Resources Control Board for a review of this Order. If you choose to do so, you must submit the petition to the State Board within 30 days of the Regional Board's adoption of this Order.

I, Gerard J. Thibeault, Executive Officer, do hereby certify that the foregoing is a full, true, and correct copy of an order adopted by the California Regional Water Quality Control Board, Santa Ana Region, on April 15, 2005.

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Gerard J. Thibeault  
Executive Officer



# California Regional Water Quality Control Board

## Santa Ana Region



Alan C. Lloyd, Ph.D.  
Agency Secretary

3737 Main Street, Suite 500, Riverside, California 92501-3348  
Phone (951) 782-4130 – FAX (951) 781-6288 – TTY (951) 782-3221  
<http://www.waterboards.ca.gov/santaana>

Arnold Schwarzenegger  
Governor

April 1, 2005

Mr. Steve Reich  
Downtown Auto Wrecking  
519 E. Mill Street  
San Bernardino, CA 92408

### ADMINISTRATIVE CIVIL LIABILITY COMPLAINT NO. R8-2005-0028

Dear Mr. Reich

We are enclosing a copy of the staff report and tentative Order No. R8-2005-0062 for Complaint No. R8-2005-0028, proposing an Administrative Civil Liability of \$5,000 for violations of the California Water Code and Waste Discharge Requirements, Order No. 97-13 (NPDES No. CAS618003) for Downtown Auto Wrecking.

As you have been informed, a public hearing on this matter is scheduled for the Regional Board meeting on April 15, 2005 at the City of Loma Linda Council Chambers, 25541 Barton Road, Loma Linda, California. An agenda announcement for the meeting is also enclosed. Please note that the meeting starts at 9:00 a.m. and this item is Item 23 on the agenda.

At that hearing you or your representative will have the opportunity to appear and be heard, and to contest the allegations in the Complaint and the imposition of penalties by the Board.

If you have any questions regarding this complaint, you may contact Muhammad Bashir at (951) 320-6396. All legal questions should be referred to our legal counsel, Jorge Leon, at (916) 341-5180.

Sincerely,

Gerard J. Thibeault  
Executive Officer

Enclosures: Agenda for the April 15, 2005 Regional Board Meeting  
Staff Report for Item 23  
Tentative Order No. R8-2005-0062

*California Environmental Protection Agency*



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STATE OF CALIFORNIA  
CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD  
SANTA ANA REGION

In the matter of:

Steve Reich, Owner  
Downtown Auto Wrecking  
519 E. Mill Street  
San Bernardino, CA 92408

Complaint No. R8-2005-0028  
for  
Administrative Civil Liability

YOU ARE HEREBY GIVEN NOTICE THAT:

1. You are alleged to have violated provisions of law for which the California Regional Water Quality Control Board, Santa Ana Region (hereinafter Board), may impose liability under Sections 13385 of the California Water Code.
2. A hearing in this matter has been scheduled for the Board's regular meeting on April 15, 2005 at 25541 Barton Road, Loma Linda. You or your representative will have an opportunity to appear and be heard, and to contest the allegations in this Complaint and the imposition of civil liability by the Board. An agenda for the meeting will be mailed to you not less than 10 days before the hearing date.
3. At the April 15, 2005 hearing, the Board will consider whether to affirm, reject or modify the proposed administrative civil liability or whether to refer the matter to the Attorney General for recovery of judicial civil liability.
4. Your facility, located at 519 E. Mill St., San Bernardino, is currently regulated under the State's General Permit for Storm Water Discharges Associated with Industrial Activities, Water Quality Order No. 97-03-DWQ, NPDES No. CAS000001 (General Permit). Your facility's WDID Number is 8361004480. The General Permit requires you to submit an annual report by July 1 of each year.
5. Because the annual report was not submitted, a Notice of Noncompliance was issued to you on July 26, 2004. A second Notice of Noncompliance was issued on September 2, 2004. Both letters were sent by certified mail and the return receipts indicate that they were received by your facility. The Notices of Noncompliance requested submittal of the completed annual report to the Board office within 30 days, with a statement explaining why the annual report was not submitted by the July 1 deadline, and the measures that you will take to ensure that future annual reports are submitted on time. The September 2, 2004 Notice of Noncompliance also warned you of the mandatory fines for failure to submit the annual report.

6. Section 13385(a)(2) of the California Water Code provides that any person who violates waste discharge requirements issued pursuant to the Federal Clean Water Act shall be civilly liable. Section 13385(c) provides that civil liability may be administratively imposed by a regional board in an amount not to exceed ten thousand dollars (\$10,000) for each day the violation occurs.
7. Based on non-submittal of the 2003-2004 Annual Report, the facility is alleged to have violated the General Permit for 173 days (from July 2, 2004 to December 22, 2004, date of submittal of the annual report). The total maximum liability for this violation is \$1,730,000.
8. Section 13399.33(c) of the California Water Code provides that the Regional Board shall impose a minimum penalty of \$1,000 for any person who fails to submit an annual report in accordance with Section 13399.31 of the Water Code.
9. Section 13385(e) specifies factors that the Board shall consider in establishing the amount of civil liability. These factors include: nature, circumstances, extent, and gravity of the violation, and, with respect to the discharger, the ability to pay, any prior history of violations, the degree of culpability, economic benefit or savings, if any, resulting from the violation, and other matters that justice may require. At a minimum, liability shall be assessed at a level that recovers the economic benefits, if any, derived from the acts that constitute the violation. The factors are evaluated in the table on the following page.

Factor	Comment
A. Nature, Circumstances, Extent and Gravity of Violation	Downtown Auto Wrecking has received two written notifications to submit their annual report. The report was due on July 1, 2004; the report was submitted on December 22, 2004. The annual report was not submitted on time.
B. Culpability	The facility obtained coverage under the General Permit on April 6, 1992. Annual reporting has always been a requirement of the General Permit. Downtown Auto Wrecking violated the terms of the General Permit by failing to submit the annual report in a timely manner.
C. Economic Benefit or Savings	Cost savings from the late submittal of the annual report is estimated to be less than \$50.



<b>D. Prior History of Violations</b>	<p>Downtown Auto Wrecking has a long history of non-compliance with timely reporting and submittal of incomplete and/or inaccurate reports. On April 4, 2003, the Regional Board affirmed an Administrative Civil Liability (ACL) complaint issued to Downtown for failure to submit the 2001-2002 annual report and failure to conduct or document an adequate inspection and monitoring program. Mr. Reich did not attend the hearing. The \$2500 penalty has not been paid.</p> <p>The facility obtained coverage under the General Permit on April 6, 1992. Except for the timely submittal of the 1997-98 and 1998-1999 annual reports, the facility has been chronically late in submitting its annual reports. Board staff issued Notices of Non-Compliance or Notices of Violation for non-submittal of annual reports for 1992-93, 1995-98, 1996-1997, 1999-00, 2000-01, and 2001-02. In 1998, an ACL was submitted for non-submittal of the 1996-1997 annual report. However, it was withdrawn based on the discharger's claim that the annual report was mailed to the wrong address.</p>
<b>E. Staff Costs</b>	<p>Regional Board staff spent approximately 10 hours investigating this incident (@\$70.00 per hour, the total cost for staff time is \$700).</p>
<b>F. Ability to pay</b>	<p>The discharger has not provided any information to indicate that it is unable to pay the proposed amount. However, it is a small business with limited resources and Mr. Reich has previously indicated that business has not been good.</p>


10. After consideration of those factors, the Executive Officer proposes that civil liability of \$5,000 be imposed on Downtown Auto Wrecking for the violation cited above. This includes the mandatory minimum penalty.

### WAIVER OF HEARING

You may waive your right to a hearing. If you wish to waive your right to a hearing, please sign the attached waiver form and return it in the enclosed preprinted envelope, together with the bottom portion of the invoice and a check or money order payable to the State Water Resources Control Board for \$5,000.

If you have any questions, please contact Milasol Gaslan at (951) 782-4419, or contact the Regional Board's counsel, Jorge Leon, at (916) 341-5180.

3-1-05  
Date

  
Gerard J. Thibeault  
Executive Officer

In the matter of: )  
)  
Steve Reich, Owner )  
Downtown Auto Wrecking )  
519 E. Mill Street )  
San Bernardino, CA 92408 )

Complaint No. R8-2005-0028  
for  
Administrative Civil Liability

### WAIVER OF HEARING

I agree to waive my right to a hearing before the Santa Ana Regional Water Quality Control Board with regard to the violations alleged in Complaint No. R8-2005-0028. I have enclosed a check or money order, made payable to the State Water Resources Control Board, in the amount of \$5,000. I understand that I am giving up my right to be heard and to argue against allegations made by the Executive Officer in this complaint, and against the imposition of, and the amount of, the liability proposed.

\_\_\_\_\_  
Date

\_\_\_\_\_  
Steve Reich